

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

No. 2:14-CV-01038-JCC

**AMAZON.COM, INC.'S RESPONSE
TO FTC'S MOTION TO SEAL**

NOTED ON MOTION CALENDAR:
Friday, July 17, 2015

Pursuant to Civil Local Rule 5(g) and the parties' Stipulated Protective Order (Dkt. Nos. 16, 17), Defendant Amazon.com, Inc. ("Amazon") responds to the Federal Trade Commission's ("FTC") Motion to Seal (Dkt No. 37).

In conjunction with its recently filed Reply in Support of Motion to Compel Discovery Responses (Dkt. No. 36), the FTC filed under seal Exhibit N to the Declaration of Jason Adler (Dkt. Nos. 36-2, 39).¹ In addition, the FTC publicly filed a redacted version of its reply brief, the redacted text of which either quotes from or describes generally the FTC's view of the content of Exhibit N. The FTC also filed under seal an unredacted version of its reply brief. (Dkt. No. 38.)

Amazon does not ask the Court to maintain the FTC's reply brief under seal, but does

¹ Although the FTC filed the entire document under seal, it also redacted several pages, acknowledging that at least those pages were not germane to its reply brief.

request that Exhibit N remain under seal. In connection with this response, Amazon has publicly filed a redacted version of Exhibit N that displays all content in the document that is potentially germane to the FTC's motion and on which the FTC relies.

DISCUSSION

A. Exhibit N

Exhibit N is a confidential and proprietary Amazon document produced to the FTC that contains revenue and projected-revenue data; confidential analysis of key drivers across a variety of in-app-purchasing metrics; discussion of potential strategic projects addressing those metrics; and identified risks associated with each project and metric, including proprietary, strategic proposals with respect to customer and app-developer experiences. Declaration of Aaron Rubenson in Support of Amazon.com Inc.'s Response to FTC's Motion to Seal ¶ 3. The information contained in Exhibit N is the type that Amazon takes care to keep confidential. *Id.* When relevant to its operations, to maintain its competitive position, or to ensure customer satisfaction, Amazon analyzes data that it collects and maintains. *Id.* The data and analysis contained in Exhibit N represent one example of this, and disclosure of the information contained in Exhibit N would likely result in competitive harm to Amazon. *Id.*

To that end, Amazon makes significant efforts to keep information like that in Exhibit N confidential. *Id.* ¶ 4. Those efforts include prohibiting distribution of such documents outside of Amazon, limiting the people within Amazon who may access such documents, and storing such documents in secure locations. *Id.*

B. The Parties' Meet and Confer

The parties were unable to stipulate to filing a redacted version of Exhibit N before the FTC filed its reply brief. Declaration of Jeffrey M. Hanson in Support of Amazon.com Inc.'s Response to FTC's Motion to Seal ¶ 3. Subsequent to the FTC's filing, however, counsel for Amazon and the FTC again conferred regarding publicly filing a redacted version of the exhibit.

1 *Id.* ¶ 5. Now equipped with the understanding of how the FTC intended to describe Exhibit N
 2 and on which portions of Exhibit N it intended to rely, Amazon agrees that the entirety of the
 3 FTC’s reply brief can be filed without redaction. *Id.* Moreover, Amazon proposed to the FTC
 4 that it would publicly file with this response a redacted version of Exhibit N, labeled Exhibit
 5 N-b. *Id.* Amazon believes that Exhibit N-b sufficiently discloses the information that is
 6 potentially germane to the FTC’s motion, and Amazon has agreed to withdraw its confidentiality
 7 designations for those unredacted portions. *Id.*; *see also* Local Civ. R. 5(g)(1)(A) (requiring that
 8 the parties “meet and confer to determine whether the designating party will . . . agree to redact
 9 the document so that sealing is unnecessary.”). Although the FTC believes that some portions of
 10 those redactions are relevant to its motion, the FTC informed Amazon that it “won’t dispute
 11 Amazon’s proposal to publicly file [its redacted] version [Exhibit N-b].” Hanson Decl. ¶ 6.

22 **C. Request for Unsealing and Sealing**

23 Amazon therefore does not object to the unsealing of the FTC’s unredacted reply brief.
 24 (Dkt. No. 38.)

25 Amazon does request, however, that the Court maintain under seal previously filed
 26 Exhibit N. (Dkt. No. 39.) Good cause exists to maintain under seal Exhibit N because it
 27 contains confidential and proprietary financial reports, data analysis, and strategic plans. *See,*
 28 *e.g., In re Midland Nat. Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th
 29 Cir. 2012) (holding that where the sealed records are “attached to a non-dispositive motion . . . ,
 30 the usual presumption of the public’s right of access is rebutted.”); *Microsoft Corp. v. Motorola,*
 31 *Inc.*, 2012 WL 5476846, at *4 (W.D. Wash. Nov. 12, 2012) (sealing “strategic planning and
 32 financial information”); *In re Microsoft Xbox 360 Scratched Disc Litig.*, 2009 WL 481325, at *1
 33 (W.D. Wash. Feb. 24, 2009) (Coughenour, J.) (“The exhibits that remain under seal . . . contain
 34 Defendant Microsoft’s confidential business information regarding the Xbox 360 optical disk
 35 drive’s technical specifications and other attributes. . . . [T]he Court is persuaded that these

1 materials contain proprietary information that would cause Defendant competitive harm if
2 disclosed. Such concerns overcome the strong presumption of public access to court records.”).

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5 Moreover, the public now has access to Exhibit N-b, which displays all portions of
6 Exhibit N that are potentially germane to the FTC’s motion and on which the FTC relies. First,
7 Exhibit N-b displays all of the specific language that the FTC quotes from the document.
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9 *Compare* FTC Reply, at 2-3, with Ex. N-b at 18. Second, the FTC cites Exhibit N generally to
10 support a statement that “Amazon regularly trades in in-app charge data.” *Id.* at 3. While that
11 assertion does not in any way support the FTC’s Motion to Compel, the unredacted portions of
12 Exhibit N-b are more than sufficient to show that Amazon analyzes different types of in-app
13 charge data. The specific data redacted in Exhibit N-b are confidential and irrelevant to the
14 FTC’s discovery motion. Finally, the FTC’s Reply cites a single page of Exhibit N to support its
15 contention that Amazon analyzes data relating to “failed in-app charges due to failed password
16 entries.” *Id.* at 3. Exhibit N-b discloses the specific text of the document upon which the FTC
17 relies for this proposition and redacts only the irrelevant financial data displayed on the page. As
18 a result, the publicly filed Exhibit N-b displays all information that is potentially relevant to the
19 FTC’s motion, which further demonstrates that good cause exists to maintain Exhibit N under
20 seal.
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35 CONCLUSION

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37 For the foregoing reasons, Amazon requests the relief identified above and in its
38 proposed order submitted with this Response.
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2 DATED: July 15, 2015
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6 *s/ Harry H. Schneider, Jr.*

7 Harry H. Schneider, Jr., WSBA No. 9404
8 David J. Burman, WSBA No. 10611
9 Jeffrey M. Hanson, WSBA No. 34871
10 **Perkins Coie LLP**
11 1201 Third Avenue, Suite 4900
12 Seattle, WA 98101-3099
13 Telephone: (206) 359-8000
14 Facsimile: (206) 359-9000
15 Hschneider@perkinscoie.com
16 Dburman@perkinscoie.com
17

s/ J. Douglas Baldrige

J. Douglas Baldrige WSBA No. 37247
Danielle R. Foley (admitted *pro hac vice*)
Venable LLP
575 7th Street, NW
Washington, DC 20004
Telephone: (202) 344-4000
Facsimile: (202) 344-8300
jbaldrige@venable.com,
drfoley@venable.com

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19 *Attorneys for Defendant Amazon.com, Inc.*
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CERTIFICATE OF SERVICE

I certify that on July 15, 2015, I electronically filed the foregoing Response to FTC's Motion to Seal with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to attorneys of record.

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 15th day of July, 2015.

s/ Harry H. Schneider, Jr.